

**REMARKS****Claim Rejections – 35 USC 112**

The rejections under 35 USC 112 are respectfully traversed.

In the English language, the word “ones” means two or more of something and does not mean “one.” The words “one” and “ones” are different words and are not confusable with one another. A database search of issued US patents by the undersigned yielded over 74,000 issued patents in which the phrase “ones of said” appears in the claims, making clear that the Office does not regard the phrase “ones of said” as being vague and indefinite.

The term “such as” as used in claim 2 is not used to denote something that is optional. Applicants agree that in some English language contexts “such as” could be used to introduce something that is optional. However, the Office action is taking the phrase “such as” out of context and giving it an incorrect English language interpretation. The entire phrase being used is “is such as to.” In the English language, the recitation that “said second algorithm is such as to preferentially select...” as used in claim 2 is a way of characterizing in a *definite* way the nature of the second algorithm. A database search of issued US patents by the undersigned yielded over 2,900 issued patents in which the phrase “is such as to” appears in the claims, making clear that the Office does not regard the phrase “is such as to” as being vague and indefinite.

The Office action seems to be confusing the word “preferentially” with the word “preferably.” If claim 2 used the word “preferably,” then applicants might agree that such a word would be improper as not making clear whether the limitation in question is part of the claimed subject matter or not. However, the word preferentially means favoring something over something else. Thus the recitation in claim 2 that “said second algorithm is such as to preferentially select...a link that said first algorithm had previously selected” means that the second algorithm, when making a selection, favors, or gives preference to, the link that the first algorithm had selected. A database search of issued US patents by the undersigned yielded over 5,500 issued patents in which the word “preferentially” appears in the claims, making clear that the Office does not regard the word “preferentially” as being vague and indefinite. Again, it is believed that the Office action has confused the word “preferentially” with the word “preferably.”

The phrase “is adapted to” has been used in patent claims for decades. A database search of issued US patents by the undersigned yielded over 114,000 issued

patents in which the phrase "is adapted to" appears in the claims, making clear that the Office does not regard the phrase "is adapted to" as being vague and indefinite.

The recitation of the parameter K is not indefinite. The reference to "K of said links" in claim 7 is immediately followed by the recitation "having indices 1,2,...K" making clear that K is some integer. Similar considerations apply to the parameters M and N.

### **Allowable Subject Matter**

The Office action indicated that claims 9, 18-22 and 26 are directed to allowable subject matter.

#### **Claim 9**

Rather than re-write 9 in independent form, applicants have amended independent claim 1 to incorporate all the limitations of claim 9 and intermediate claim 6, and some of the recitations of intermediate claim 7.

The reason that some of the limitations of claim 7 have not been included in amended claim 1 is that those limitations (lines 3-5 of claim 7) present details as to an illustrative best-fit algorithm. However, the Office action states that claim 9 was allowable due to its recitations relating to the recited interleave algorithm and not the recited best-fit algorithm of claim 7. This being so, it is believed that the examiner would regard claim 9—and thus amended claim 1—as being allowable even without the recitations in claim 7 relative to the best-fit algorithm. Accordingly, amended claim 1 does not incorporate the recitations from claim 7, lines 3-5.

Other claims dependent from claim 1 have either been canceled or amended in light of the amendments made to claim 1 and/or in light of the cancellation of claims that were dependent therefrom.

#### **Claims 18-22**

Rather than rewrite claim 18 in independent form, applicants have, in a similar vein, amended independent claim 11 to include the recitations of claim 18 and of the intermediate claims 15 and 16 but, again, not including the recitations from claim 16 relative to the best-fit algorithm, for the reasons noted above relative to claim 7.

Other claims dependent from claim 11 have either been canceled or amended in light of the amendments made to claim 11 and/or in light of the cancellation of claims that were dependent therefrom.

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Claim 26

Rather than rewrite claim 26 in independent form, applicants have, in a similar vein, amended independent claim 23 to include the recitations of claim 26 and some of the limitations of intermediate claim 24 but, again, not including the recitations from claim 24 relative to the best-fit algorithm, for the reasons noted above relative to claim 7.

Other claims dependent from claim 23 have either been canceled or amended in light of the amendments made to claim 23 and/or in light of the cancellation of claims that were dependent therefrom.

Conclusion

In view of the foregoing, it is believed that the claims now in the application are all in condition for allowance and reconsideration is requested.

Applicants do not intend the cancellation or amendment of any claim herein as signifying that applicants necessarily agree with the grounds of rejection or objection set forth in the Office action. Rather, pursuant to the policy of the assignee, AT&T Corp., applicants have chosen to put this application into allowable form with claims directed to subject matter that was deemed allowable, reserving the right to pursue the originally filed claims, or claims similar to them, in one or more continuation applications that the assignee may wish to have filed in the future.

Respectfully submitted,

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